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A Trilogy of Essays on Scholarship

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A Trilogy of Essays On Scholarship

A Preliminary Note on Five Scholarly Ideals

Here I briefly describe five ideals or forms of scholarship. The next several posts will seek to add some detail. I am not arguing a priority for any single ideal at this point and recognize that different disciplines conducted by varying scholarly schools of thought or methodology would consider some of the ideals irrelevant or even illegitimate. Nonetheless they are being offered as one way to look at what scholars do in the pursuit of knowledge or in the attempt to persuade and implement what they consider to be reform of social conditions they consider unjust. I also want to make it clear that the dividing lines between the ideals are not entirely neat or that there is a mixing of forms in some contexts. Yet I do think that, as expressed, the five ideals represent a set of distinct orientations that produce a different kind of scholarly behavior and output as the primary characteristic of what the particular scholar or collectivist school is doing.

Each of the five scholarly ideals can offer a legitimate orientation depending on the degree of bias and the context of their use. The problems arise when the ideals are confused and inappropriately commingled. When this occurs the result is an incoherent muddle. This is because even when operating at its best each ideal serves a different scholarly mission and generates a distinct product and arguably in some instances requires a different kind of person filling the role of the scholar. A consequence is that there are no consistent intellectually based standards by which to judge the merit of a scholar's work when it is being done in service of a different form of the university ideal than that possessed by evaluators who are not part of a school or collective. Serious problems also emerge when scholars are activists and advocates who tend toward the extremes of a strongly held "cause" because effective advocacy almost invariably involves degrees of overstatement and distortion as part of seeking to influence others and advance agendas.

At the beginning it is helpful to realize that the five versions of the scholarly ideal produce different forms of intellectual work with distinct goals and motivations. The scholar engaging in such activity can vary dramatically in terms of what the individual is seeking to achieve through his or her research output and actions that might be taken related to the findings reflected in that product. Similarly, there is a diverse set of targets at which the work is directed. These targets include communicating ideas and knowledge to other scholars who are invested in a specific sub-discipline. They also include overt (and covert) attempts to influence and reshape the behavior of institutions the individual scholar or scholarly collective considers to be a means through which changes thought necessary can be achieved. The five ideals are:

- 1. Development and pursuit of original knowledge for its own sake*
- 2. Preservation, refinement and transmission of the best forms of knowledge*

3. *Objective social critique*

4. *Individual activism*

5. *Collective activism.*

These ideals are not simply a reflection of what has been traditionally thought of as the dichotomy between “pure” and “applied” research. Nor are they necessarily on a linear continuum in which each is a variant or extension of the other. The simple fact is that each ideal in its most strict sense is different in kind and not only degree. Each represents different values, assumptions and commitments as to what is involved in the central role of the scholar.

Each ideal, including the two long-cherished ideals of the discovery of new knowledge and the refinement, preservation and extension of existing knowledge, has often been honored more in lofty rhetoric than in the reality of what most scholars actually do.¹ Even our supposed core paradigm of the pursuit of “pure” scientific knowledge is not quite as pristine as some would have us think. Robert Wolff reminds us, for example, that:

Orthodox science is “established” in our society in just the way that particular religious creeds have been established in earlier times. The received doctrine is taught in the schools, its expounders are awarded positions, fellowships, honors, and public acclaim; dissenting doctrines ... are excluded from places of instruction, denied easy access to media of communication, officially ridiculed, and—in the case of medical practices—even prohibited by law from translating their convictions into action.²

Regardless of academic rhetoric, universities are powerful institutional systems that are as doctrinaire and hidebound in their behavior as any other institution whose beneficiaries are seeking to protect vested interests or simply defend that with which they are most familiar and on which their training is based and reputations sustained. This is consistent with Keynes’ conclusion that most university faculty are little more than “academic scribblers” who live their lives content to operate within the safe confines of the ideas and reward system in which they were initially indoctrinated and from which they extract

¹ I have written a fair amount on the nature of the university and the role of scholars. See David Barnhizer, “The University Ideal and the American Law School,” 42 *Rutgers L. Rev.* 109 (1989); “A Chilling of Discourse,” 50 *St. Louis University L. J.* 361 (2006); “Truth or Consequences in Legal Scholarship,” 33 *Hofstra Law Review* 1203 (2005); “Freedom to Do What? Institutional Neutrality, Academic Freedom and Academic Responsibility,” 43 *J. Legal. Ed.* 346 (1993); “The Justice Mission of American Law Schools,” 40 *Cleveland St. L. Rev.* 285 (1992); “The Purposes of the University in the First Quarter of the Twenty-first Century,” 22 *Seton Hall L. Rev.* 1124 (1992); “The University Ideal and Clinical Legal Education,” 35 *New York L.J.* 87 (1990); “The Revolution in American Law Schools,” 37 *Cleveland St. L. Rev.* 227 (1989); “The University Ideal and the American Law School,” 42 *Rutgers L. Rev.* 109 (1989); “Prophets, Priests and Power Blockers: Three Fundamental Roles of Judges and Legal Scholars in America,” 50 *Pitts. L. Rev.* 127 (1988).

² Robert Paul Wolff, *The Poverty of Liberalism* 16 (1968).

benefits.³ While the ideal of the pursuit of knowledge for its own sake is frequently offered as a justification for independent research and scholarship, the likelihood of individuals behaving in full accord with such a strongly principled norm depends on the incentives and disincentives to which they are subject.

The University as a Simultaneously Symbolic and Adaptive Institution

Richard Hofstadter reminds us: “*the university is only a symbol of a larger and more pressing problem of the relationship of intellect to power: we are opposed almost by instinct to the divorce of knowledge from power, but we are also opposed, out of our modern convictions, to their union.*” Hofstadter also concludes that scholars have increasingly sought the solace of celebrity and “relevance” as a substitute for independence and originality.⁴ Peter Drucker offers a vital point in his explanation that what is happening represents the “new reality” of an increasingly pluralist democracy, concluding that: “*The new pluralism ... focuses on power. It is a pluralism of single-cause, single-interest groups—the “mass movements” of small but highly disciplined minorities. Each of them tries to obtain through power what it could not obtain through numbers or through persuasion. Each is exclusively political.*”⁵

Think about the effects such “realities” have on the scholarly activity of individuals and groups determined to advance causes they hold most dear. Nor is this in any way a defense of how scholars have behaved before now. My point is that many of those engaged in the scholarly function, particularly in the disciplines Crane Brinton defined as *non-cumulative*, have changed into a set of people whose agendas are more political than intellectual and whose interests are being defined by the aims of a collective movement rather than independent thought.⁶

Then and now, within the institution of the university whose scholars claim a commitment to the pursuit of “pure” knowledge and full intellectual honesty, there is very little purity, honesty or even self-awareness about how the mission of the scholar is corrupted. Richard Hofstadter may have identified the root of the problem in his explanation of the inherently non-intellectual nature of the modern pursuit of knowledge, including the work of most university professors. He concludes:

[T]he work of lawyers, editors, engineers, doctors, indeed of some writers and of most professors—though vitally dependent upon ideas, is not distinctively intellectual. A man in any of the learned ... professions must have command of a substantial store of frozen ideas to do his work; he must, if he does it well, use them intelligently; but in his professional capacity he

³ John Maynard Keynes, *The General Theory of Employment, Interest and Money* 383, 384 (1935).

⁴ Richard Hofstadter, *Anti-Intellectualism in American Life* 427 (1963).

⁵ Peter Drucker, *The New Realities* 76 (1989).

⁶ Crane Brinton, *Ideas and Men: The Story of Western Thought* 516, 517 (1950) suggests why we have failed to develop a more integrative form of knowledge about humans-in-community and as individuals: “logical positivism asserts that the only valid kind of knowledge is cumulative knowledge, the kind one finds in natural science.” He concludes, “The logical positivist tends to regard all traditional philosophical thinking, the kind involved in fields like metaphysics, ethics, political theory, even most epistemology ... as a complete waste of time.”

uses them mainly as instruments. *The heart of the matter ... is that the professional man lives off ideas, not for them. His professional role, his professional skills, do not make him an intellectual. He is a mental worker, a technician.*⁷

The Increasingly Ideological Nature of the University

Much of what is going on among academics working in the “soft” disciplines of law, philosophy, social studies, political theory and literature is ideological. As such, it seeks to influence social behavior and has an impulsion toward taking action at its core. In that world it is fair to describe the use of ideas as “weapons” fashioned to overcome opponents.⁸ For scholars operating from an ideological base they have already decided that change is needed and their work aims at achieving what they consider necessary. But since it is far more likely that the coordinated efforts of groups will be able to mobilize the pressures and momentum involved in strategies for social change, activist scholars inevitably tend toward enlisting in a collective rather than engaging in individual action. For those possessed by an ideology this behavior seems natural because it is change they are seeking rather than knowledge.

Daniel Bell reminds us: “Ideology is the conversion of ideas into social levers.” He adds: “*For the ideologue, truth arises in action, and meaning is given to experience by the ‘transforming moment.’ He comes alive not in contemplation, but in ‘the deed.’*”⁹ In our modern academic culture, interest groups of all persuasions are engaging in exchanges based on propaganda and stereotypes and increasingly, activist scholars who are allied with specific identity factions and who are skilled at using words as weapons, are central participants in the conflict. In that intensified context legitimate criticism of the flaws in our social institutions easily slides toward fanaticism and resistance to the ideological critique is scorned as ignorant bigotry. Some of our most important social disputes have drifted toward the extremes. I am, for example, still waiting for the so-called “dialogue on race” to begin, as opposed to the “slings and arrows” thrown about by bigots and radicals of all ethnic backgrounds. Whether we are even capable of actually discussing issues in the “tinderbox” of modern discourse is questionable to the point where everything of consequence is a matter of political power struggles and very little that scholars say is free of an ideological “taint”.

The consequences of the clash of ideologies have been unfortunate from the perspective of the integrity of the university and its scholars. Maxine Greene warns that slogans and propaganda have replaced real dialogue. She describes slogans as, “rallying symbols” that “in no sense describe what actually exists, yet they are taken—wishfully or desperately—to be generalizations or statements of fact.”¹⁰ Consider Camus’ observation about the need to keep sufficient distance from the heated conditions of society in order to retain a clear

⁷ Richard Hofstadter, *Anti-Intellectualism in American Life* (1963).

⁸ See, e.g., Max Lerner, *Ideas Are Weapons: The History and Uses of Ideas* (1991).

⁹ Daniel Bell, *The End of Ideology* 370-371 (1960).

¹⁰ Maxine Greene, *Teacher as Stranger: Educational Philosophy for the Modern Age* 70 (1973).

perspective. He writes: “[I]t is not possible to be a militant in one’s spare time. And so the artist of today becomes unreal if he remains in his ivory tower or sterilized if he spends his time galloping around the political arena.... [T]he writer must be fully aware of the dramas of his time and that he must take sides every time he can or knows how to do so. But he must also maintain or resume from time to time a certain distance in relation to our history.”¹¹

The Search for Security and Power Is Easier Than the Creative Pursuit of Knowledge

If one lacks the courage or insight required for original thinking true intellectual freedom can be a curse rather than a blessing since it forces you to become aware of your limitations. The “solution” for some is to work in a system characterized by a received orthodoxy that takes its own legitimacy for granted, lacks self-awareness and never tests itself against its lofty rhetoric. This allows a university intellectual to “have his cake” of status and lifetime employment through tenure without using his talents in an attempt to create true and meaningful knowledge. True creativity and insight is considerably more rare than we might hope. Even when we manage to do work early in our careers that “shows promise” to other scholars, we often find ourselves pursuing “safe” topics in an increasingly politicized university or find that we have said all we had to say in that early burst of productivity that earned the boon of lifetime job security.

Belying the image of scholars and intellectuals as courageous moral beacons or as deeply committed to the pursuit of truth wherever it might lead, Diekema identifies self-interest as at the core of the problem, reasoning: “*Self-censorship is often a matter of personal convenience for faculty. They simply assess the potential costs before speaking out....*”¹² Scholars operating in a culture filled with implicit inhibitions against pursuit of a particular strand of knowledge with rewards distributed for following the agenda of the political orthodoxy distort not only how we interpret knowledge but even what knowledge we seek. Such an environment also creates a risk-averse unwillingness to critique colleagues’ work. I have had law faculty from various institutions tell me that they “hid” positions until they were awarded tenure out of fear that an unpopular position would cost them votes. The same applies to assessing others’ work because academics have long memories and thin skins.

Risk aversion is found throughout American universities.¹³ Scholars fear the consequences of writing something that will displease members of an academic political collective. This apprehension or “shaping” causes them to either write cautiously or alter their analysis to appeal to one of the more powerful interest groups. There are many topics that are simply taboo and are avoided by any university academic interested in remaining employed. Nor, given the difficulty and risk involved in attempting to achieve original insights rather than

¹¹ Camus, *Demain* interview, in *Resistance, Rebellion, and Death*, at 238.

¹² Diekema, *Academic Freedom*, *id.*

¹³ Consider the comments of Arthur Koestler, in Diekema, *Academic Freedom*, concerning the defenses raised by what he refers to as *academic mediocrities* who fear anything new will destroy their intellectual fiefdoms and expose their inadequacies.

being content to fit comfortably into an existing niche, is it surprising that some scholars submerge themselves in intellectual or political groups. For many scholars the situation has become one of risk avoidance rather than intellectual independence and pursuit of deep and creative insights into the human condition. This stifling of intellectual freedom and honesty occurs during a scholar's most important formative period in which career agendas are being set and a base of intellectual capital created.

Becoming part of a scholarly community with an accepted focus protects a scholar's employment position and also offers a template for what is considered to be acceptable work. When this occurs, and it is a common element in American law schools, the members of such interest groups automatically praise whatever a member-scholar says. This phenomenon occurs because it is seen as supporting the collective's agenda, validating and increasing the institutional power of its members. It seems to advance "the cause" even if the actual situation is too often that members of a scholarly collective are mainly talking incestuously with each other by "preaching to the choir". As to true discourse, it is a victim. As Jacques Ellul tells us: "modern man is beset by anxiety and a feeling of insecurity.... The conflict of propaganda takes the place of the debate of ideas."¹⁴

One inevitable effect is that the collective explicitly and implicitly dictates the scope of a scholar's research agenda and in doing so provides a kind of career "sanctuary" while limiting and foreclosing a full range of inquiry and experimentation. This occurs because some topics advance the collective's mission while others are taboo because they have the potential to undermine the arguments being made by the group. While this is important for group solidarity it is a contradiction to what we have long considered to be the mission of the scholar.

Stereotypes, Propaganda, Slogans and Collectivist Repression

I equate part of what is going on in the rise of scholarly collectives committed to activist matters as bordering on a form of stereotypical "group think" in which otherwise intelligent people trade their intellectual independence and depth of inquiry for status and security. In *Propaganda*, Ellul reminds us: "A stereotype is a seeming value judgment, acquired by belonging to a group, without any intellectual labor.... The stereotype arises from feelings one has for one's own group, or against the "out-group". Man attaches himself passionately to the values represented by his group and rejects the clichés of the out-groups.... The stereotype, ... helps man to avoid thinking, to take a personal position, to form his own opinion."¹⁵

Although the names have changed and the interests being advocated by the activist collectives transformed, the problem with university integrity and scholarship is not entirely new. Bernard Meland placed much of the blame for what he saw as the degradation of modern scholars' intellectual integrity at the foot of universities' obsessive

¹⁴ Jacques Ellul, *The Technological Society*, at vii (1964).

¹⁵ See Jacques Ellul, *Propaganda* 180 (1965).

drive to achieve status, a goal not unrelated to academics' economic gain, ego, and ambition. He concludes:

[T]he concern for status in the academic world and, by this measure, in the world at large is of more serious consequence. The concern for status, we are told by our psychologically informed colleagues, is one of the basic human traits in the normal human community. To be recognized for what we are worth--this, it would seem, is a human requirement. Yet the concern for status in the academic world rarely achieves this level of restraint. To be recognized for what one is worth would, in many instances where status is dominantly a concern, be tantamount to being publicly disclaimed.¹⁶

The distorting effects of reward and status systems do not, however, stop scholars from engaging in self-deception as to the professed integrity of their intellectual pursuits or from using idealized rhetoric to defend their own positions regardless of their suspicions about how their work might be biased or corrupted by personal agenda or the power of "group-think". The self-deception and rationalization become easier when the scholar works within "soft" disciplines such as law, social science, literature, politics or the like, those Brinton referred to as *non-cumulative* because we are using the same concepts today that were developed and applied centuries ago. This is because those disciplines operate through layers of interpretation and opinion more than hard data capable of being tested through repetitive methodologies.

This criticism of the soft or non-cumulative disciplines does not mean there is any lack of bias, distortion or closed-minded opposition to new ideas and discoveries in the hard sciences. Bernard Cohen reminds us that: "*new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it.*"¹⁷ The message is that if bias and control by dominant orthodoxies and "old boy networks" occurs even within the realms of hard science there is absolutely no chance that such biases would not be more pervasive in the "opinion-based" disciplines such as law.

Some Other Implications

Eric Hoffer reminds us that "faultfinding men of words" are the initial step in attacking an existing system. The aim of "faultfinders" is not to offer a full and balanced intellectual analysis of the truth of the system being critiqued but to undermine its stated principles and legitimacy.¹⁸ As scholars move from detached positions to active and legitimate engagement with the conditions of society there is an increasing risk that the scholar will lose perspective. The active role is one for which many scholars are ill prepared and one capable of changing the people who fulfill it. The activist role comes close to guaranteeing a skewing of perspective as assumption and bias increasingly influence perception and

¹⁶ Bernard E. Meland, *Higher Education and the Human Spirit* 7 (1953).

¹⁷ I. Bernard Cohen, *Revolution in Science* (1985).

¹⁸ See Eric Hoffer, *The True Believer: Thoughts on the Nature of Mass Movements* 120 (1951).

interpretation. The result will often be that the scholar becomes an advocate and rhetorician, even a propagandist, rather than a seeker of truth in the way demanded by the goals of the pursuit of original knowledge, the refinement of existing knowledge or honest and balanced critique of critical social issues. As this occurs, objectivity and detachment lessen and the work takes on a higher probability of being shaped by the scholars' personal opinions, by collective agendas, and by social goals and allegiances rather than intellectual clarity and honesty.

As Thomas Kuhn remarked, even in the strictest application of the scientific method to the conditions of what we are calling *cumulative* or scientific knowledge the researcher's process of observation alters the phenomena being observed.¹⁹ As we move further away from the application of strict methodologies and the measurement of *cumulative* knowledge phenomena to the "softened" material of *noncumulative* knowledge the dangers of subjectivity and distortion of the observed (and critiqued) reality due to the researchers' bias increase. This danger exists even for the scholar seeking to objectively critique society in a balanced way but expands significantly with activist scholarship and dramatically with the work of activist collectives housed within the university. In those activist realms the critique is often so personal that the scholar becomes a subjective element of the data being studied rather than an objective observe.

The scholar who is attempting to generate a balanced and objective critique of society for purposes of its regeneration and reform is not predominantly activist in focus as opposed to critical, explanatory and prescriptive. Social science can, for example, be used to inform our understanding of the truth of the conditions studied. The critical scholar's hope is that—once understood—this understanding of right and wrong will inform policy-makers and lead to changes that improve the conditions. But the difference is that the scholar's strategy of intellectual critique is still based on careful use of a shared and accepted methodology and concern for the authenticity of what is discovered. In this context the scholar remains at a remove from the work and while it is political in nature in that it critiques a specific sphere of human activity it continues to retain a significant degree of objectivity.

The identification of injustices and the use of social science and analysis to formulate potential remedies allow the scholar to engage in relatively traditional forms of analysis because the dominant mode of inquiry is explication and testing. But as the detached, critical and evaluative scholar moves from that active but traditional posture toward becoming an activist-scholar who demands the political implementation of solutions that inevitably require the reallocation of social goods, power and responsibility, conflict is heightened. This is also the point at which the individual becomes less the scholar and more of the political activist—converting the discourse into a form and style that is highly manipulative, goal-oriented and rhetorical rather than balanced, explanatory and illuminating.

¹⁹ See, Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Enlarged edition, University of Chicago 1962, 1970).

The risk is that activist scholars, particularly those who are members of a collective, may have decided on a preferred version of the truth before they offer their conclusions--or even before they initiate their research. Responsible critical scholars offer insights that demonstrate deficiencies or explain paths by which solutions can be created or implemented. They analyze with balance and integrity and demonstrate clearly the pathway followed to reach the conclusions. While the scholar critiques the society and political process, the choice as to whether those criticisms are adopted is left to the society itself. The critical scholar's work is essentially complete at the point of the critique, including the crafting of effective strategies and solutions.

The argument being made here is not that activism or collective organization within the university is always illegitimate--in fact challenging abuses of power is a key function of an institution responsible for pursuing not only truth but also social justice. The question is about balance and the clear tendency of dominant orthodoxies and ideological collectives to distort and suppress by subtle influences as well as overt sanctions. In a corrupted culture it becomes more important than ever for the university and its scholarly voices to "speak truth to power" and it cannot do this if its scholars succumb to the mania of ideology and the corruptions of those in power who will always try to use scholars' voices for their own ends.

While activism is an essential element of the modern university in a world increasingly driven by widespread propaganda, economic distortions, abuses of power and lies it also produces consequences for the scholar who, like Icarus risks coming too close to the "sun" of power, ideology and politics and metaphorically falls back to earth as the wings melt from the heat. The "sun" of scholarship was thought to be reason, evidence and an honest analytical process. If one is seeking to break down such long-standing assumptions about how to approach the truth of reality it is not surprising that the foundations of reason and evidence are targets. This of course brings us to the sometimes valid, but overstated, claims of postmodernism's assault on reason and truth as little more than a manifestation of discriminatory power.

A result of the assault by Hoffer's "faultfinders" is the weakening and even abandonment of reasoned discourse and the substitution of emotional criteria and political polemic. In this regard Jung warns: "*Rational argument can be conducted with some prospect of success only so long as the emotionality of a given situation does not exceed a certain critical degree. If the affective temperature rises above this level, the possibility of reason's having any effect ceases and its place is taken by slogans and chimerical wish-fantasies.*"²⁰ Honest discourse, or even the attempt to engage in such activity is the victim. In part this is because the intention of the extreme activist "scholar" is to "speak to the choir" of similarly oriented activist-scholars or to support or expand a political movement located outside the university rather than to pursue truths.

²⁰ C.G. Jung, *The Undiscovered Self*, 12, 13 (Mentor 1957). Translated from the German by R.F.C. Hull.

Red Giselle and Five Scholarly Ideals

The five ideals as discussed in a previous post (*A Preliminary Note on Five Scholarly Ideals*) are as follows.

1. *Development and pursuit of original knowledge for its own sake*
2. *Preservation, refinement and transmission of the best forms of knowledge*
3. *Objective social critique*
4. *Individual activism*
5. *Collective activism.*

Among the five ideals, I suggested three versions of the university scholar's ideal--the critique of society for purposes of its regeneration and improvement, individual activism, and collective activism—that are aimed primarily at creating a fairer and more just society within the scholars' frame of reference. As with any approach it is possible to use the methodology in ways that corrupt or undermine its core thesis. Abandoning commitments to such values as truth, accuracy, rational discourse and balance undermines the legitimacy of work purporting to advance the purposes of an ideal. Claiming that one is doing something that fits those commitments while hiding behind masks of elevated rhetoric is an hypocrisy that risks destroying the legitimacy of the specific undertaking itself while distorting the mission of the university world in regard to its commitment to truth, evidence, fairness and open discourse.²¹

Arguments have even been made by some of the most activist scholars that such commitments are themselves mechanisms of repression and that concerns with truth, evidence, critical but fair analysis and honest discourse are the products of centuries in which those in power, i.e., "white males" have used such tools to maintain their dominance and discriminate against others.²² Taking this position within the university means that politicized, ideological, arational and self-interested writing becomes "scholarship" when in fact it is too often what might be called "fugitive rubbish".

²¹ Marcel writes: "The first ... observation to be made is that the fanatic never sees himself as a fanatic; it is only the non-fanatic who can recognize him as a fanatic; so that when this judgment, or this accusation, is made the fanatic can always say that he is misunderstood and slandered." GABRIEL MARCEL, *MAN AGAINST MASS SOCIETY* 136-137 (1969).

²² MARTHA C. NUSSBAUM, *CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN LIBERAL EDUCATION* 19 (1997) ("Socratic argument is suspected ... of being arrogant and elitist.... [T]he elitism is seen as that of a dominant Western intellectual tradition that has persistently marginalized outsiders. The very pretense that one is engaged in the disinterested pursuit of truth can be a handy screen for prejudice."

Another element of some of this critical scholarship is that, as Seth Stephenson writes, the power to condemn is seen by the activist collectives as a one-way street. This has been demonstrated in university speech codes that reflect many academics' and an increasing number of students' agreement with the suppression of open discourse do to reasons of claimed insult, insensitivity, hurt feelings or the giving of offense. Following this path confers a veto power to individuals and groups that have increasingly stifled social communication while accelerating and intensifying the fragmentation of American society. Stephenson argues, "*These [university speech] codes have their roots in theories, which gained favor with campus radicals in the 1960s, contending that '[i]f the powerful and the weak were required to play by the same rules the powerful always would win.'*" In other words, this theory goes, the disadvantaged need different rules. What's more, these rules should extend to speech, not just to actions, because speech can be just as powerful and hurtful."²³ Such intimidation of speech by aggressive and angry political movements have spread well beyond the Ivory Tower [although universities have been complicit in the process] to the extent our social discourse has been poisoned and virtually all our speech is characterized by slogans, stereotypes, propaganda and distortion even to the point of lies.

Red Giselle, Russia and the Power of Love

The distinction between the five scholarly ideals can be understood through an analogy to ballet. When I first taught in St. Petersburg, Russia a wonderful part of the experience was the opportunity to see a stimulating variety of classical and modern Russian ballet performances. Few would argue with the assertion that classical ballet in Russia is an exquisite experience performed at the highest level of artistic talent. In a sense, classical ballet is a sort of "time machine". It offers the finest traditional forms of the balletic art to new generations, allowing audiences in the twenty-first century the same experiences enjoyed by theater attendees in 1755. The music, choreography, costumes, gestures and dance movement are identical to those of centuries earlier. This can be equated with the spirit of the second ideal of the university--the preservation and sharing of the highest form of knowledge in a manner that recognizes its worth and connects our culture and civilization across generations and centuries.

Of course, classical ballets were also innovative, creative and "new" when first offered, helping to construct new forms of the art and changing the culture within which they first appeared. This reflects some of the inevitable tension between what are being called the first and second ideals--the efforts to discover and create new knowledge and forms and the search for perfection in refining existing knowledge. The difference in perspective was captured as well as any in Ricky Nelson's song *Garden Party* in which he laments the audience's negative reception of his new songs by singing, "*If memories were all I sang, I'd rather drive a truck.*" The ideal of creating new knowledge cannot be stated any better.

²³ Seth Stevenson, "The Thought Police," January 2003, available at http://www.bostonmagazine.com/articles/the_thought_police/.

The contrast between classical and modern ballet also helps clarify what I am talking about in the context of the knowledge role of the university and the various ideals that apply to the work of university scholars. Modern ballet is not *better* than classical--it is simply a *different* form. On one hand it is an interpretation of what *is*, and on the other an entirely new creation. But while modern ballet may shift the music, rhythms, themes, movements and the like, it still is derivative in that it takes from and depends on the underlying *technique* and ethos of ballet. But while the commitment to the underlying art form and staging at its highest quality remain essential elements, modern ballet also extends the form and even creates a new variation. It is therefore an experiment, but one that operates within the commitment to discipline of ballet and the technique of ballet. This is consistent with another ideal of the university--the quest to discover, create and develop--and a look to the future instead of the past.

In order to explain more specifically what I consider to be the differences between the five ideals I offer the work of Boris Eifman, a Russian creator of modern ballet with whose work I was enthralled when teaching in St. Petersburg. Eifman created adaptations of existing balletic works I consider brilliant in their scope and quality. Of the five Eifman ballets I saw in Russia one was called *Red Giselle*. *Red Giselle* focused on a ballerina who was caught in the transition from Tsarist Russia to the Soviet Union, including the darkness, repression and terror. In this work Giselle was loved by an agent of the Cheka, the forerunner of the KGB, and used her power as a seductive woman just as the Chekist used his power as an agent of the state. *Red Giselle* communicates the abuse of power and manipulation of humans, as well as the power of love as the Chekist allows Giselle to escape to Paris even though he wants to hold her for himself.

In *Red Giselle*, Eifman uses the power and technique of the ballet to convey powerful messages about people and power and people *in* power. The work is a critique of the darkness of unfettered power even while offering a glimmer of hope in the ability of even key parts of the state to retain parts of their humanity in a regime committed to inhumanity. *Red Giselle* illustrates a critique of society by its creator, Boris Eifman, and is consistent with the third "individualist" ideal of the university. But Eifman's own commitment is still grounded in technique, quality and excellence of the form--with the added element of a powerful message.

The differences as we move from the ideal of social critique to those of individual and collective activism are relatively easy to set out but difficult to know where to draw valid lines. In *Red Giselle*, for example, we admit there is a political and moral critique that is wise to heed. In a sense this can even be seen as a new form in which traditional knowledge is being conveyed so that perhaps it is a reminder or reaches new ears in a different and more powerful form. In this artistic vehicle it penetrates the psyche at a point other than the rational and can therefore be more deeply embedded.

Most of us also know at some level that government always tends to abuse power if left unrestrained. And we also know that the Soviet period carried with it severe abuses of power entirely inconsistent with its professed ideals. So *Red Giselle* as performed at the beginning of the Twenty-first Century builds on knowledge that is not new, even though it

uses a newer art form as the vehicle through which to communicate its message. In the Russia of the present day *Red Giselle* is a reminder of the dangers of uncontrolled state power. But it is safer to voice the message at this time than at the height of the former Soviet Union. At least it was safer before Vladimir Putin consolidated his control and began to shut down Russia's instrumentalities of social criticism and free speech.

A very different situation is created if we move *Red Giselle* back in time ninety years to 1923 when the conditions portrayed were contemporaneous. At that point Eifman's work is not simply a new variation on the balletic art form or a cautionary political warning against a regressive form of government but a direct confrontation with the early Soviet regime it would have been attacking. Even in 2000 when the new Russia was in a state of potential collapse with calls for a return to some strong man leader who would help recapture the stability and power of the Soviet Union, Eifman's message was a reminder of the dangers of the Soviet system. Nor is it hard to envisage a reaction against Eifman by those seeking a return to the Soviet era. In 1923, however, *Red Giselle* would either never have appeared if created, or would never have been created inside Russia. If it had been we should expect Eifman to be quickly convicted of the ever-popular "crimes against the state" and eliminated one way or another.

Assume, however, that the 1923 fictional Eifman created the work and realized that it would never be allowed on the public stage due to its subversive nature. But being opposed to the Soviet State he wants his message to be communicated to those who share his perspectives and to educate others who may be willing to listen. So rather than try to present *Red Giselle* to the general public Eifman offers his ballet in private homes, in rural villages, and other hidden venues in order to convince others of the dangers of the USSR and the need to destroy or reform it. I suggest this describes a venture driven primarily by the message he wants to convey to the relevant political community in which he hopes they are moved to act, not by the balletic form itself. Here we have the individual activist ideal of the university.

Now shift this approach slightly to one in which Eifman creates a group of ballet composers and convinces them to orient their works around the common theme of abuse of power by the Soviet government and the need for reform or revolution. The members of this new movement look at each other's works and think about how they can be adapted to send the desired messages most effectively. Their focus is no longer primarily on the ballet as art form but on the message that can be sent through the use of the form. This, I suggest, represents the collective activist ideal which uses the art form to shape and communicate powerful messages and in which the form is primarily a means to an end rather than an end in itself. Similarly, the message is shaped by the collective rather than as an independent and creative act of the composers. Here also, the "truth" of the message being communicated is accepted *a priori* and the collective members are designing ways in which the greatest impact on the selected problem is achieved rather than concentrating on the quality of the underlying art form.

But what do we say if the power of the art form is controlled by the state and is used as a way to inculcate the supposed legitimacy of its rule to all citizens? When this happens we

call the process propaganda because there is only one acceptable point of view and others are suppressed, deviants are eliminated or “re-educated”, and the collective is intent not on the creativity of the art form but on its use to compel adherence to its point of view and acceptance of its sovereignty.

Law, Power, and Legal Scholarship

Law is a form of politics made concrete. It both reflects and generates political values and positions in ways that, in a complex Rule of Law society that has lost its shared values and ability to communicate and negotiate based on commonly held norms, is an engine that creates and allocates power and duty. Oddly enough, many of the interests that are now relying on the Rule of Law as the justification for their positions would be complete “losers” if their arguments and institutional manipulations were not successful. “Law”, writ large, is the only thing that underpins such issues as gender and sexual rights, racial preferences, wealth redistribution and so much more. Given the character of law as the (theoretical) source of value and the instruments of implementation it is inevitable and appropriate that legal scholars are political theorists and critics. They are responsible for expressing their carefully developed insights through the mechanism of legal scholarship. The problem is that the discourse has become unbalanced and the discussion one-sided.

Law is a manifestation of power and the best scholarship done by law school academics inevitably relates to the exercise of the power and force of law. Lawrence Friedman explains the connection thus: “it is through law, legal institutions, and legal processes that customs and ideas take on a more permanent, rigid form. The legal system is a structure. It has shape and form. It lasts. It is visible. It sets up fields of force. It affects ways of thinking. When practices, habits, and customs turn into law, they tend to become stronger, more fixed, more explicit.”²⁴ Explaining, critiquing, influencing and challenging the aims and interactions of law and power are the primary responsibility of legal scholars, that which legitimates their claim to tenure and privilege within the university.

The reality of group behavior is that power is defended if one possesses it, sought if one desires or needs it, and undermined when the scholar and the reference group with which a scholar identifies successfully engages in a strategy of “softening up” the foundation principles and assumptions of competitors. In his book, *Power*, Adolf Berle warns that control of institutions is the only way by which people can extend their power beyond the limited reach of their fists or guns. Those collective identity groups that are seeking to capture the ability to dictate rules to others or to protect themselves against others’ control create strategies to gain possession of the institutions that make and enforce the rules or laws.²⁵

While it is appropriate and necessary that legal scholars include the political in their work, including the politics of justice and a critique of unjust elements of the system, it is inappropriate that scholars become so possessed by the political that they lose their fragile

²⁴ Lawrence Friedman, *American Law* at 257.

²⁵ Adolph A. Berle, *Power*, at 92 [1967].

objectivity in the passionate embrace of political agendas. Our job is to understand and critique the political dimension of law, not to *become* the politics themselves. In many of its aspects law is a form of “applied philosophy”. A result of our succumbing to the lure of the intensity and celebrity of the political sphere is that we have gone from a pseudo-intellectual culture characterized by a false claim to Langdellian science to an incoherent *melange* without a core methodology or standards of evaluation.

Demise of the “Free-Floating” Intellectual

Commitment to the values of individual intellectual freedom and independence has been increasingly degraded. Karl Mannheim used the concept of the “free-floating” or socially disconnected intellectual during the 1920s to describe those of independent mind who possessed the courage to critique power wherever their journey led. But Russell Jacoby says that even when first written: “Mannheim’s defense of independent intellectuals earned him the ire of both left and right.”²⁶ Jacoby goes on to suggest that: “If Mannheim’s analysis of the “free-floating” intellectuals seemed questionable [even] in the late 1920s, eighty years later it is outright impossible. Today intellectuals are increasingly “attached,” affiliated or institutionalized. Mannheim can [therefore] be seen as the last theorist of the independent intellectuals, not the first. *After Mannheim, the older vision of intellectuals as independent and rootless makes way for a view of intellectuals as dependent and connected.*”²⁷

The conflict between the five ideals of scholarship I introduced in a recent post—*A Preliminary Note On Five Scholarly Ideals* and continued in *Red Giselle*--is due to a distinction between the first three ideals, those of discovery of original knowledge, refinement of existing knowledge and objective social critique, and the individual and collective activist ideals in which the “truth” of a scholar’s proposition is largely (or entirely) accepted and the scholar often becomes part of an effort to change the reality that has been critiqued. The distinction results in a difference not simply in degree or orientation but in kind.

The processes of individual and collective scholarship of an activist bent--are aimed at achieving preferred outcomes in which committed university-based intellectuals ranging from traditional legal scholars to “true believers” seek to influence systemic behaviors and reshape institutions in ways they consider more fair or just. Those presenting their positions inside the systems of scholarship are aiming to “win” rather than dispassionately and objectively offering all facts and arguments that would allow an independent fact-finder to determine the argument’s actual truth. It is this commitment to “winning” that alters the nature of the scholarly enterprise.

²⁶ Russell Jacoby, *The End of Utopia*, at 110.

²⁷ Jacoby, *End of Utopia*, at 111.

A result is that we see the emergence of “cliques” of scholars. The problem at this point is that in many instances these “attached” scholars are not pooling their intellects in efforts to advance knowledge for itself but are in pursuit of particular political agendas. This by itself is not inevitably bad because creativity can be stimulated in some ways through the sharing of insights, but when the cliques are comprised of “true believers” and ideologues convinced of the rightness of their positions or submerged in a collective in order to gain the security and benefits of membership they constrain the full range of potential work by their members. Although we all yearn for the social justice many of these groups claim as their goal within the construct of issues a collective is advocating, something is lost in the trade off between political outcome and intellectual merit.

Similarly, the intensity of politics and ideology generates a deadening aura once those who believe deeply in a particular mission and agenda achieve a significant presence in an institution and gain the power to define agendas. It is not inappropriate to suggest that by their very nature many scholars are easily intimidated by the politics and assumptions of an intensely political faculty group trumpeting what they claim to be “moral” leverage. A result for some is to join the “in crowd”. Others alter their own work. They do this to avoid conflict by suppressing themes they might otherwise pursue, choosing non-controversial areas of inquiry and making sure that they do not criticize anything of concern to the dominant cliques of “scholars”.

The conflict among factions for power suggests strongly that postmodernists are correct about the historical fact that law is an instrument of interest group power. As one commentator observes, postmodern critics may not believe in a search for truth, but “[t]hey do, however, believe in politics—and most especially in identity politics.” Pinsker further suggests that for postmodernists, “academic freedom” has come to represent the struggle for equality by these interest groups, while “truth” may be seen as an obstacle to that equality.²⁸ But such critiques seem oblivious to or even seek to obfuscate the fact that such behavior is intrinsic to anyone or any group who occupies a position in which power is wielded. This means that those who have been successful in challenging the older applications of power against them by what they consider discriminatory or self-interested groups with different agendas are themselves inevitably subject to the same tendency to serve the agendas of their own identities and ideologies.

Deborah Tannen describes a “culture of argument” that has emerged within academic and political circles as one in which we approach public dialogue as if it were a fight, concluding the “argument culture” causes us to be adversarial. She describes the path she followed to her insight, revealing: *“The answer crystallized when I put the question to a writer who ... had misrepresented my work: [I asked] ‘Why do you need to make others wrong for you to be right?’ Her response: ‘It’s an argument!’* Tannen realized the fact that her critic perceived what was going on as argumentation rather than reasoned discourse was the answer. She concludes: *“[w]hen you’re having an argument with someone, your goal is not to listen and*

²⁸ Sanford Pinsker, “Tenure can rescue the academy,” *Wash. Times*, Oct. 31, 1996, at A23.

*understand. Instead, you use every tactic you can think of—including distorting what your opponent just said—in order to win the argument.”*²⁹

As Arthur Schopenhauer observes, the search for “truth” in any kind of public discourse is a fiction—the universal goal of the base human beings who engage in such discourse is to win, not to understand.

[I]n a dialectical contest we must regard objective truth as an accidental circumstance, and look only to the defense of our own position and the refutation of our opponent’s. Truth is in the depths. At the beginning of a contest each man believes, as a rule, that right is on his side; in the course of it, both become doubtful, and the truth is not determined or confirmed until the close. Dialectic, then, has as little to do with truth as the fencing master considers who is right when a quarrel leads to a duel. Thrust and parry is the whole business. It is the art of intellectual fencing: and it is only when we so regard it that we can erect it into a branch of knowledge.³⁰

Daphne Patai makes the point of how this political culture works within the university. She explains that quite some time ago: “[Walter] Metzger and [Richard] Hofstadter argued that academic freedom hangs by a slender thread. Today, instead of heeding their warning and giving serious thought to a tradition in danger of dissolution, throughout the university people convinced of their political righteousness challenge the very concepts of academic freedom and free speech, and they back that challenge with the coercive power of rules, codes, and disciplinary tribunals.”³¹

Much of academic scholarship has become a form of advocacy and advocacy cares about truth only when it serves the advocates’ interest. The problem with the advocate/activist focus is as Anthony Kronman observes: “*The indifference to truth that all advocacy entails is likely ... to affect the character of one who practices the craft for a long time and in a studied way.*” Since a great deal of modern noncumulative scholarship in areas such as philosophy, law, politics and literature contains an activist/advocacy element we need to be concerned about its effect on the scholar’s clarity of vision as well as aim and motivation.³²

If, for example, the university scholar’s motivation is a dispassionate search for original knowledge for itself or refinement of the highest forms of existing knowledge, the inclusion of an activist agenda by other scholars represents a threatening challenge. The sense of activist mission, however noble in some areas of action, infuses the activist scholar’s work with an aggressiveness and bias toward achieving the underlying agenda. This bias intuitively offends the values of scholars committed to advancing pure knowledge for its own sake according to processes that are as demonstrably objective as can be achieved.

²⁹ Deborah Tannen, *The Argument Culture: Moving from Debate to Dialogue* (1998).

³⁰ See Arthur Schopenhauer, *The Art of Always Being Right* 33-42 (2009).

³¹ Daphne Patai, “Speak Freely, Professor -- Within the Speech Code,” *Chronicle of Higher Education*, June 9, 2000, pg. B7. See also, Patai, *Heterophobia: Sexual Harassment and the Future of Feminism* (Rowman & Littlefield, 1998).

³² Anthony Kronman, “Legal Scholarship and Moral Education,” 90 *Yale L. J.* 955, 964 ().

The same can be said for any scholar who is simply attempting to offer a full and balanced view on an important topic. Advocacy does not seek balance as opposed to outcome. This is shown clearly in Aristotle's message in his *Rhetoric*.

Eric Hoffer argues that one "of the characteristic attitudes of the modern intellectual—his tendency to see any group he identifies himself with as a chosen people, and any truth he embraces as the one and only truth...." ³³ This kind of *prophetic* intensity of belief and identification with a cause easily blinds the activist scholar to the fuller implications of his or her work. To the extent the scholar is pursuing the implementation of a specific agenda the blindness may well be willful or seen by the actor as a legitimate method of achieving political change. Scholarship thus becomes just another weapon in the pursuit of agendas.

The goals, methods and cultures are fundamentally different between the practitioners of the five ideals. Much of modern activist scholarship is self-consciously and aggressively political in nature and is to a large extent highly subjective. It has been argued that a *political monoculture* has come to dominate academia, one in which the vast majority of academics think the same, share the same values, and collectively fail to evaluate the foundations of their own assumptions while rejecting and denigrating others. The figures on political diversity in the university world are extreme. ³⁴

The problem is that politics is not about truth in any strict sense but is concerned with attaining power or challenging power and gaining influence. The rightness of the protests by the collective interests and their goals of fair treatment, opportunity and non-discrimination should not mask the fact that the language used by each collective movement (and counter-movement) has been language of attack, protest and opposition—not reasoned discourse. It is language used as weapons to gain or defend power. ³⁵

While truth is not necessarily irrelevant to many activist scholars it is often subordinated to a stronger priority or is subsumed by powerful and often untested or partial assumptions on which the subsequent analysis and conclusions are based. Keynes observes: "[The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the ruled is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slave of some defunct economist....]" ³⁶

³³ See, Hoffer, *The Ordeal of Change*, at 43, 45.

³⁴ Davenport, "Few universities are open to conservative views". See also, *The Chronicle Review*, Page: B7, "Inside the Mind of an Ivy League Professor," Frank Luntz, FrontPageMagazine.com | August 30, 2002. Luntz writes: "A new survey of Ivy League professors conducted by the Luntz Research Companies on behalf of the Center for the Study of Popular Culture reveals an indisputable and painfully evident lack of diversity when it comes to the attitudes and values of Ivy League faculty. Not only is there an alarming uniformity among the guardians of our best and brightest minds, but this group of educators is almost uniformly outside of mainstream, moderate, middle-of-the-road American political thought. So much for diversity."

³⁵ Max Lerner, *Ideas Are Weapons: The History and Uses of Ideas* (Transition, 1991).

³⁶ Keynes adds: "[T]he power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas.... [S]oon or late, it is ideas, not vested interests, which are dangerous for good or evil." Keynes, at 383, 384.

I suspect it is a characteristic of activist-scholars that many not only have allegiances with their primary university discipline but are also devoted members of political collectives working outside the university. Avoiding the blurring of the lines becomes very difficult when one is embedded in a political interest group. The strategic and goal-oriented behavior of activist-scholars inevitably leads to the use of political speech. Activists who are seeking to build new paradigms through critique and active reform can be expected on occasion to be abrasive, deceptive, aggressive, and irritating. Just as are those they challenge, they are hostages of their own experiences and allegiances even to the extent they become intellectually blinded to alternative perspectives and are intolerant of anyone who disagrees with their particular vision of a brave new world. They become what Hoffer called “true believers” in the rightness of their cause and will do virtually anything to advance it.³⁷

A result of loose collections of scholars working within institutions operating according to these multiple ideals is a decreased ability to evaluate, value or even tolerate work done within a different scholarly paradigm than the one served by particular scholars. There is a conflict for power, priority and dominance just as in any other political system that distributes rewards, status and opportunity. It too often becomes a contest between competing propagandists rather than a legitimate search for knowledge.

The problem is that political speech is inherently manipulative, not through the attempt to persuade by demonstrated truth and balanced analysis but through rhetoric, polemic and propaganda. I argue that a substantial amount of activist *noncumulative* scholarship of the kind found in American law schools involves rhetorical deception--both conscious and subconscious--aimed at achieving political ends whose truth and justice are taken for granted or ignored in order to achieve power, group identity or status.³⁸

Maxine Greene warns that slogans and propaganda have replaced intelligent dialogue. She states that slogans are, “rallying symbols” that “in no sense describe what actually exists, yet they are taken—wishfully or desperately—to be generalizations or statements of fact.”³⁹ What we are calling lies involves confusion, accidental misapplication of “truths” to inappropriate contexts, and category mistakes. But it also includes an increase in overt lying, obfuscation, deliberate misinterpretation and falsification of data, biased interpretations, and out-of-context arguments and analyses. Many in pursuit of agendas in the “culture war” consider it allowable and necessary to deceive as part of the strategy of conflict. They consider their noble ends to justify the means.

While we might assume that there is room within the university for all the cultures to coexist, the culture of each ideal threatens the fundamental beliefs, agendas and goals of the other. The rise to dominance of one version of the university ideal seems to require the suppression of others. The emergence of “identity sects” that provide meaning and psychological security to their

³⁷ See, Eric Hoffer, *The True Believer: Thoughts on the Nature of Mass Movements* 120 (1951), and his discussion of how the “fault finding man of words” attacks a dominant orthodoxy in order to undermine its perceived legitimacy and hold on power.

³⁸ Brinton, *Ideas and Men*, at 13.

³⁹ See Maxine Greene, *Teacher As Stranger* at 70.

members creates a situation in which it is dangerous to question the avowed tenets of the group whether from inside or without. As a result, challenging the assumptions of factions brings accusations of heresy, disloyalty, and bigotry.⁴⁰ Of late we have seen the powerful sanctions involved in being labeled as having “phobic” mindsets in which an interest group can condemn those of whom they disapprove as being homophobic, Islamophobic, anti-Semitic, sexist, racist or, failing that, “insensitive” or “intolerant.”⁴¹ These are powerful condemnatory terms that, once leveled, are virtually impossible to dispel.⁴²

Our dilemma is that, like all hypocrites or true believers, we cannot afford to admit that all our fundamental norms are assumptions and choices. This is because we must have reasonably consensual criteria on which social choices are grounded. Otherwise we are adrift in a limbo where there is neither stability nor consistency. We elevate Reason to the highest levels, but Reason is only a tool and method. It does not provide the initial substantive premises on which it operates. Freeman and Appel remind us that: “All we can do by reasoning is to learn that if our first assertion is true, then all the implications, which follow from it according to the laws of valid reasoning, must also be true. But the laws of reasoning are silent concerning the truth of the crucial first premise.”⁴³

⁴⁰ Seth Stevenson, “The Thought Police,” January 2003, http://www.bostonmagazine.com/articles/the_thought_police/.

⁴¹ WILLIAM F. ALLMAN, *THE STONE AGE PRESENT: HOW EVOLUTION HAS SHAPED MODERN LIFE—FROM SEX, VIOLENCE, AND LANGUAGE TO EMOTIONS, MORALS, AND COMMUNITIES* (1994). Allman quotes Yeats. “Civilization is looped together, brought under a rule, under the semblance of peace by manifold illusion.” *Id.* at 220. Allman goes on to describe the increase in complexity that has generated some of the conflict between factions and the need to label and antagonize opposing groups. Specifically, Allman notes that for most of human existence, survival depended upon the ability of individuals to identify with and support small groups comprising family members and close associated friends. *See id.* at 221. With the development of large-scale societies, individuals and family groups suddenly had to deal with the conflict between minds adapted to identification with small family groups and the need for interrelationships with complete strangers. *See id.* Arguably, factions and their conflicts with other factions are the natural result of the human mind’s search for group support coupled with distrust of the “other” who is not part of the group.

⁴² The power to condemn is seen by the collectives as a one-way street. This has been demonstrated in university speech codes that reflect academics’ agreement with the suppression of open discourse. Seth Stevenson, “The Thought Police,” January 2003, available at http://www.bostonmagazine.com/articles/the_thought_police/.

⁴³ *See* EUGENE FREEMAN AND DAVID APPEL, *THE WISDOM AND IDEAS OF PLATO* 71 (1963).